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BLANK ROME LLP			DESAI, HEMANT	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/980,084
Filing Date: May 02, 2002
Appellant(s): LAITT, ANDREW

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Group 3700

Michael White
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/14/2006 appealing from the Office action mailed 12/14/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The following are the related appeals, interferences, and judicial proceedings known to the examiner, which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Mr. Andrew Laitt of London, United Kingdom.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,199,756	DAVY	8-1965
2,194,451	SOUBIER	3-1940

European application 0302413

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8-20, 22, 27, 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufman (2835596) and Davy (3199756) or Soubier (2194451), and further in view of European Application 0302413 ('413).

Kaufman discloses a method of packaging food-stuff (12, figs. 1-2) comprising the steps of forming a tube (10, figs. 1, 2-5) having a pre-determined cross-sectional shape and area (see col. 3, lines 34-38), forming a first seal (11, figs. 2-3) at a lower end of the tube, feeding a pre-determined amount of the food-stuff (see col. 3, lines 34-38) to be packaged into the tube, forming a second seal (16, figs. 2-3) in the tube at a pre-determined distance above the first seal (11) to form a sealed pouch of pre-determined dimensions and pre-determined volume containing the food-stuff, each pouch having at least one long side face which is as long as or longer than all other faces of the pouch (see figs. 1-4), and inserting the sealed pouches in a carton (19, fig.

5), wherein the bulk volume of the predetermined amount of foodstuff fed into each pouch is less than the pre-determined volume of each sealed pouch (see col. 3, lines 34-38), so that when each pouch is sealed, each pouch contains the desired quantity of food-stuff, as well as a pre-determined amount of air so that if a sealed pouch is placed on the long side face (see figs. 3-4), a layer of air is formed above the foodstuff (see col. 2, lines 63-72; col. 3, lines 1-2).

Kaufman, as mentioned above discloses all the claimed limitations except for forming a strip of sealed pouches and inserting the strip into a carton. However, Davy or Soubier teaches to form a strip of sealed pouches (see figs. 4-5 of Davy and figs. 2 and 3 of Soubier) and inserting the strip into a carton (E, fig. 5 of Davy and fig. 3 of Soubier) so that the container serves as a magazine from which the packages may be dispensed one or more at a time for subsequent separation of the packages from the strip for individual delivery (see col. 1, lines 20-27 of Davy and page 2, line 33-40). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the strip of sealed pouches and inserting the strip into a carton as taught by Davy in the method of packaging food-stuff of Kaufman so that that the container serves as a magazine from which the packages may be dispensed one or more at a time for subsequent separation of the packages from the strip for individual delivery.

The method of packaging foodstuff of Kaufman as modified by Davy or Soubier, as mentioned above, meets all the limitations of claim 1, except for forming brick shaped configuration. However, European Patent ('413) teaches to form the brick

shaped container for better handling and mechanical strength of containers (see col. 8, lines 31+). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the brick shaped container in the modified method of packaging foodstuff of Kaufman as taught by European Patent ('413) for better handling and mechanical strength of containers.

Regarding claims 2-3, the modified method of Kaufman discloses that the strip of pouches is arranged substantially upright or transverse in the carton (see fig. 5).

Regarding claims 4-6, the modified method of Kaufman teaches to insert strip of pouches into a carton, but does not disclose expressly that at least two strips of sealed pouches should be arranged in a carton. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to arrange at least two strips of sealed pouches in a carton because Applicant has not disclosed that by arranging two strips of sealed pouches in a the carton provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the way Kaufman discloses to insert the strip of pouches into a carton because both arrangements would perform equally well as far as the packaging of the sealed strip of pouches in the carton is concerned. Therefore, it would have been an obvious matter of design choice to modify Kaufman to obtain the invention specified in claims 4-6.

Regarding claim 8, the modified method of Kaufman teaches to form the brick shaped container by forming pleat by the molding jaws (20a, fig. 1).

Regarding claim 9, Kaufman discloses that the pouches are substantially the same size.

Regarding claims 10-11, the modified method of Kaufman teaches to form the cuboidal shape container.

Regarding claims 12-13, Kaufman discloses that the sealing is by means of heat (see col. 3, lines 28-32).

Regarding claim 14, Kaufman discloses that the tube is formed of plastic material (see col. 3, lines 24-26).

Regarding claim 15, Kaufman discloses plastic tube material. Kaufman does not disclose expressly the waxed paper. However, it is obvious to one having ordinary skill in the art at the time the invention was made to use the plastic or waxed paper for their use in packaging the foodstuff to make the package moisture resistant. Applicant did not seasonally challenge the holding of Official Notice of use of waxed paper, and therefore the limitation in the claim is now deemed Admitted Prior Art.

Claims 17-20, Soubier teaches a line of perforations formed between each pouch of the strip of the pouches (26, fig. 1) to form a weakened line to sever the packages easily along this weakened line (see page 2, lines 3-10). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the line of perforations formed between each pouch of the strips of the pouch as taught by Soubier in the strip of pouches of Kaufman as modified by Davy to separate the packages easily from the remainder of the strip.

Regarding claim 22, the packaged brittle foodstuff produced by the method.

Regarding claim 27, Soubier teaches that the strip of filled pouches is folded at points between the pouches (see fig. 2) to insert the strip in the box in zigzag pattern. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the method of packaging food-stuff of Kaufman to fold the strip of filled pouches at points between the pouches to insert the strip in the box in the zigzag pattern.

Regarding claim 30, Davy teaches that the foodstuff comprises flakey or granular substance (see col. 2, lines 30+). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to fill the containers in the modified method of Kaufman of packaging food-stuff with cereal.

Regarding claim 31, Kaufman discloses the step of determining the predetermined volume of food-stuff, determining the predetermined volume of the sealed pouches, so that the predetermined volume of the sealed pouches is greater than the predetermined volume of food-stuff and so that, when the pouch is placed on its side, a layer of air is formed above the food-stuff determining the predetermined shape and the predetermined distance between the first and second seal from said predetermined volume (see col. 3, lines 25-38, figs. 3-5).

Regarding claim 32, Soubier teaches that the carton has an opening face and a bottom face opposite the opening face (see fig. 3) and an axis extending from the bottom face to the opening face, the strip of sealed pouches is being arranged substantially transverse to the axis in the carton and arranged in a concertina configuration so that one or more of the individual packages may be severed from the

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string (see page 2, lines 35+). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the strip of sealed pouches arranged substantially transverse to the axis in the carton and in a concertina configuration so that one or more of the individual packages may be severed from the string.

Regarding claim 33, the modified method of packaging foodstuff of Kaufman, as mentioned above, meets all the limitations of claim 33.

(10) Response to Argument

Appellant's main argument regarding the rejection of the claims 1 - 6, 8 - 20, 22, 27, and 30-33 in Section VII, page 5, that one skilled in the art would not combine the teachings of Kaufman and Davy to incorporate the feature of a strip of sealed pouches into Kaufman. The Kaufman reference clearly discloses the claimed limitations of claim 1, as mentioned in the office action mailed on 12/14/2005, except for forming a strip of sealed pouches and inserting the strip into a carton. Davy teaches to form a strip of sealed pouches (see figs. 4-5 of Davy) and inserting the strip into a carton (E, fig. 5 of Davy) so that the container serves as a magazine from which the packages may be dispensed one or more at a time for subsequent separation of the packages from the strip for individual delivery (see col. 1, lines 20-27 of Davy). In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves

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or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Davy clearly teaches to form a strip of sealed pouches and inserting the strip into a carton. Further, the reference (Davy) is analogous art, i.e. method of packaging foodstuff in the pouches. There is also motivation to form the strip of sealed pouches and inserting the strip into a carton so that the container serves as a magazine from which the packages may be dispensed one or more at a time for subsequent separation of the packages from the strip for individual delivery. Therefore it would have been obvious to one skilled in the art at the time the invention was made to form the strip of sealed pouches and inserting the strip into a carton as taught by Davy in the method of packaging food-stuff of Kaufman so that that the container serves as a magazine from which the packages may be dispensed one or more at a time for subsequent separation of the packages from the strip for individual delivery.

Further, Appellant argues that one skilled in the art would also not combine the teachings of Soubier with Kaufmann because Soubier teaches away from the present invention (page 5). Soubier is particularly concerned with the packaging of coffee. Coffee is not a brittle material within the understanding of the art. Note that the second reference, Davy ('756) clearly teaches to pack the brittle material such as potato chips, popcorn, etc. (see col. 2, lines 30-33). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention to fill brittle food-stuff in the

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method of packaging of Kaufman as taught by Davy. Examiner is relying on Davy for forming a strip of sealed pouches of flaky material and inserting the strip into a carton.

In response to appellant's argument regarding the brick shaped configuration, on page 6, note that Examiner is relying on the European reference ('413).

In response to appellant's argument on page 6, paragraph 3 and page 7, paragraph 1, Examiner would like to draw appellant's attention towards the claim 1. Kaufman discloses "to form a sealed pouch of pre-determined dimensions and pre-determined volume containing the food-stuff, wherein the bulk volume of the predetermined amount of foodstuff fed into each pouch is less than the pre-determined volume of each sealed pouch (see col. 3, lines 34-38), so that when each pouch is sealed, each pouch contains the desired quantity of food-stuff, as well as a pre-determined amount of air so that if a sealed pouch is placed on the long side face (see figs. 3-4), a layer of air is formed above the foodstuff (see col. 2, lines 63-72; col. 3, lines 1-2)." Therefore, Kaufman discloses all the claimed elements. Claim and only claim

In response to appellant's argument on page 7, paragraph 2, regarding the shape of the container, note that the modified method of Kaufman meets all the claimed limitations, except for the shape of the container. Therefore, the modified method of packaging of Kaufman teaches to form the continuous strip of brittle foodstuff, except for the brick shaped container. Examiner is relying on the European reference ('413) for the brick shaped container, which is better in handling and mechanical strength of containers (see col. 8, lines 31+). Therefore, there is teaching and motivation to

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combine the European reference with the method of Kaufman of packaging brittle foodstuff to form the brick-shaped container.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Hemant Desai *HD*



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